

34.1 AUTHORITY TO DISCIPLINE, RECOMMEND PUNITIVE ACTION, SUSPEND, AND DISMISS

- .1 The Chief of Police and delegated subordinates have the authority to take disciplinary actions against members of the Department.
- .2 The authority to initiate disciplinary action is delegated by the Chief of Police to all supervisors in accordance with procedures set forth in the Rules and Regulations of the Department, the Law Enforcement Officer's Bill of Rights, the City of Hagerstown Personnel Manual, and applicable civilian labor agreements.
- .3 All supervisory officers shall have the authority to make recommendations of disciplinary actions to the Chief of Police. However, any member who observes a violation committed by another member/employee regardless of the rank, shall report the violation to the observing member/employee's commanding officer, or the highest ranking supervisor on duty for proper dissemination or action. Such reporting shall follow the procedures described in section 34.5.5.
- .4 Only the Chief of Police (or Acting Chief) has the authority to dismiss from the Department any sworn member.
- .5 All members should note that discipline is not limited to punishment. It is any method used to guide people to behave in accordance with rules of conduct or procedures. Such methods may include training, counseling, rewards, commendations, and punitive action.

34.2 INTERNAL AFFAIRS FUNCTION

- .1 For the purpose of creating a process to insure the integrity of the agency, an internal affairs function is established within the Hagerstown Department of Police. Through this function, police officers and civilian members are provided an environment wherein they can exercise their legal and professional responsibilities without fear of reprisal or harassment. Furthermore, citizens are provided an environment within which they are not subjected to law enforcement misconduct or abuse. To ensure meeting these desired ends, the Hagerstown Department of Police has adopted formal complaint procedures. All complaints received will be investigated.
- .2 A Citizens Complaint Procedure form (Form IA 38) will be available to persons inquiring about the proper procedure to file a complaint. This form will also be made available to the general public by the Community Relations Officer. Further, the Internal Affairs Administrator is responsible for seeing that copies of the form are kept on display in the Police Department lobby and in an appropriate place at City Hall.

34.3 INTERNAL AFFAIRS COMPONENT

The Internal Affairs Administrator will supervise the internal affairs function. In that capacity, he is directly responsible to the Chief of Police.

34.4 INVESTIGATIVE RESPONSIBILITIES

- .1 Shift supervisors or their designees shall be responsible for investigating complaints in the following areas:
 - .1 Alleged rudeness on the part of an officer.
 - .2 Tardiness.
 - .3 Insubordination
 - .4 Uniform or equipment violations
 - .5 Citizen disputes over parking or moving violations.
 - .6 Traffic accidents involving officers on duty.
 - .7 Violations of Rules and Regulations witnessed by the supervisor.
 - .8 Any investigation as assigned by the Chief or Captains of Police.
 - .9 Other complaints not specifically enumerated but considered minor in nature.

- .2 The Internal Affairs Administrator will be responsible for investigating complaints in the following areas:
 - .1 Formal complaints alleging serious misconduct against a member of the department.
 - .2 Allegations or suspicions of criminal activity or conduct by a member of the department.
 - .3 Allegations of police brutality/excessive force when a Department supervisor is not the one formalizing the complaint.
 - .4 Any allegation or act not specifically enumerated that is considered serious in nature.
- .3 In the following instances, the Internal Affairs Administrator will work in conjunction and cooperation with CIU investigations. In such cases, the primary consideration of the Internal Affairs Administrator is to determine if officers' actions are in compliance with the department's rules, policies, or procedures.
 - .1 Discharging a firearm by a member of the department, except during training, recreation, or when authorized by a supervisor to shoot a wounded animal to relieve its suffering.
 - .2 Any action that causes death or serious injury to any individual as a direct result of an action taken by a member of the Hagerstown Department of Police in the performance of his/her duty, as well as the circumstances surrounding the serious injury or death of any officer of the Hagerstown Department of Police.
 - .3 Any time an officer is the subject of an investigation of domestic violence.
 - .4 Any other circumstances as determined by the Chief of Police.
- .4 Departmental Accidents: Shift supervisors are responsible for investigating accidents involving departmental vehicles. Copies of the State and City Accident Reports are to be forwarded to Purchasing (for city insurance processing) on all departmental accidents and are to be included in the investigative file. An internal affairs investigation is not necessary when the officer/employee driving is determined not to be at fault. If the officer/employee is determined to be at fault or is believed to have violated departmental policy or the law and an accident resulted, an internal affairs investigation will be initiated.

34.5 RECEIVING COMPLAINTS

- .1 Any information presented to or learned by any member of this department which if true, would be a violation of Department Rules, Regulations, Policies, or Procedures is considered a complaint for the purpose of this chapter. If there is any doubt as to the classification of such information, it will be handled as a complaint. NOTE: If a supervisor has specific information that, absent an investigation, sufficiently disproves or dispels an allegation of violations of HPD Rules, Regulations, Policies, or Procedures, the allegation need not be considered a complaint.
- .2 Any person involved in a complaint against any member will be treated in a courteous and professional manner. No person registering a complaint shall be harassed or hindered in any manner.
- .3 Anonymous complaints shall be directed to and analyzed by any department supervisor. Anonymous complaints or allegations shall be screened for validity. If such a complaint is determined to be valid, it will be investigated according to Department procedures.
- .4 All members of the Hagerstown Department of Police are authorized and directed to receive any complaint that may be lodged against the department or any member thereof any time of the day or night.
- .5 Any member of this department registering a complaint against another member of this department of equal or greater rank, or a member of lesser rank not under the registering member's command, shall do so in writing to the Internal Affairs Administrator. The standard "TO, FROM, SUBJECT" format will be used. The complaint will then be investigated according to Department procedure.

- .6 Should an investigator suspect a complaint or allegation will turn into a criminal violation, the investigator will:
 - .1 Notify the Chief of Police or his designee.
 - .2 Contact the State's Attorney's Office for advice and direction.
 - .3 Notify the Internal Affairs Administrator.
- .7 To the extent that the allegations of misconduct against an member may also involve a violation of the criminal law, the procedure outlined in this chapter must be administered consistent with established constitutional rights guaranteed to all individuals charged with, or suspected of, criminal offenses.
- .8 Complaints of a serious nature will be brought to the attention of the Chief of Police or his designee immediately by the investigator. Other complaints may be brought to the Chief's attention by the investigator in his/her internal investigation report.
- .9 Complaints against the Internal Affairs Administrator or supervisors routinely assigned to internal investigation duties will be forwarded to the Chief of Police. The Chief will assign an investigator to investigate the complaint.
- .10 In order to adequately investigate all complaints against sworn personnel, complaints have been separated into two categories: inquiries and internal affair investigations (IA investigations).
 - .1 The purpose of an inquiry is to provide a means to address every complaint without the need for a formal internal affairs investigation, while providing full documentation, and addressing any need for improvement, training or policy enhancements. One might think of an inquiry as a complaint that may be easily addressed by a supervisor verbally, but has been put in writing for documentation. An inquiry report form has been devised for this purpose. Many inquiries are resolved by determining what took place and explaining police procedures to the complainant. Verbal counseling, training and/or a counseling statement are typical of the resolutions at this level when substandard employee performance or minor employee behavior issues have been identified. Additionally, if the need for a formal IA investigation is identified, then the inquiry may be closed out indicating that a formal IA investigation will be conducted.
 - .2 An internal affairs investigation (IA investigation) is a formal investigation completed under the Law Enforcement Officer's Bill of Rights (LEOBR) of which a sustained finding may result in formal punitive discipline.

34.6 STATUTORY PROVISIONS

- .1 All internal investigations involving sworn personnel shall be conducted in accordance with the Law Enforcement Officers' Bill of Rights (Annotated Code of Maryland, Public Safety Article, Title 3).
- .2 All internal investigations involving non-sworn personnel will be conducted in accordance with the City of Hagerstown Personnel Manual and applicable civilian labor agreements.

34.7 ADMINISTRATIVE PROCEDURES FOR COMPLAINT INVESTIGATIONS

- .1 When a complaint comes to the attention of a supervisor of this Department, that supervisor will complete the COMPLAINT AGAINST PERSONNEL REPORT (Form IA 01).
 - .1 The "IA Case No." will not be filled in at this time. This will be assigned by the Internal Affairs Administrator.
 - .2 If the complaint cannot be resolved at the time it is received, the supervisor WILL NOT complete "Assigned for Investigation" and "Investigative Disposition" sections.
 - .3 Additional witnesses will be listed in the beginning of the Description of Allegation Section. If more room is needed for additional Witnesses, Description of Allegation, or Investigative Disposition than is provided on the form, additional blank pages will be used.

- .4 After the supervisor fills out the form, he/she will forward same to the Internal Affairs Administrator.
 - .5 The Internal Affairs Administrator, upon receipt of the form, will assign an Internal Affairs Case Number. If the complaint has not been resolved at the time it was received, the Internal Affairs Administrator will forward the form to the Special Services Captain who will make a determination as to where the complaint shall be assigned for investigation (the "Assigned for Investigation" section will be completed at this time). In the absence of the Special Services Captain, the Operations Captain, or Chief of Police may assign the investigation. Based on the information on the form, the Internal Affairs Administrator will make the appropriate entries on the MASTER COMPLAINT LOG (Form IA 02) and the INDIVIDUAL PERSONNEL COMPLAINT LOG (Form IA 03). The form will then go to the shift, unit, or person assigned to the investigation. A copy will be retained by the Internal Affairs Administrator to go into the investigative file.
 - .6 The actual investigating officer shall sign the form in the "Investigated By" section.
 - .7 Any supervisor registering a complaint against a member under his/her command will complete the COMPLAINT AGAINST PERSONNEL REPORT (Form IA 01). The supervisor need not wait for the Internal Affairs Administrator to return the form before he/she begins the investigation, provided the violation is one described in section 34.4.1.
- .2 COMPLAINTS OF BRUTALITY: In the event that a person wishes to file a complaint alleging brutality against a sworn member (violation of Department Rules and Regulations, section 12.2.1), and the complainant has not yet had the complaint notarized, the supervisor taking the complaint will provide the complainant with a COMPLAINT OF BRUTALITY form (Form IA 04) and advise the complainant that the form must be notarized and returned to the Department within 90 days of the alleged incident. Once received back from the complainant, Form IA 04 will go into the investigative file. Form IA 01 will still be completed at the time the complaint is first brought to the attention of the Department.
- .1 When a qualified complainant files a sworn brutality complaint within the statutory period, the Department has a duty to proceed with an investigation. If that same complainant files a sworn complaint later than the statutorily prescribed time after the incident of alleged brutality, there is no duty to investigate, But, if the Department decides on its own to proceed with the investigation (and with the placing of charges if the investigation so indicates), Public Safety Article, Title 3 does not prevent it from doing so. (Baltimore City Police Dept. v. Andrew, 318 Md. 3, 566 A.2d 755 (1989)).
 - .2 In such cases where a brutality complaint is sworn to by a qualified complainant later than the statutorily prescribed time period, the supervisor taking the complaint will forward same to the Internal Affairs Administrator who will notify the Chief of Police. The Chief will make the determination as to whether or not the complaint will be investigated.
- .3 VERIFICATION TO COMPLAINANT: Once an investigation is assigned, the investigator will contact the complainant, either by phone, in writing, or in person, to advise them that they have been assigned to their complaint. For a complaint that becomes an IA investigation, the investigator will document the contact in the appropriate area on the IA01. For a complaint handled as an inquiry, the investigator will document contact with a copy of the written correspondence or by noting it in the inquiry file. The Internal Affairs Administrator will notify the complainant as to the status of any open investigation every 30 days after the complaint is received. Notifications may be made by an reasonable method (e.g., in person, telephone, email, letter, etc.) A record of status notifications will be included in the case file.

- .4 NOTIFYING MEMBER UNDER INVESTIGATION: When a member is the subject of a complaint investigation, the investigator will complete a NOTIFICATION OF COMPLAINT / INVESTIGATION (Form IA 06 for sworn members and Form IA 37 for civilian members) and present same to the member under investigation after the investigation begins. The original will go into the investigative file and a copy will go to the member under investigation. The exact date that the form is presented to the member will be at the discretion of the investigator, however this should be done preferably as soon as possible so that the member is aware of the complaint and does not learn about it through unofficial sources. The investigator may find it necessary to wait due to the nature of the investigation. IN ALL CASES the form will be completed and presented to the member before any interrogation of the member, or before the member is ordered, as part of the complaint investigation, to make oral statements or written reports on the incident, or to submit to a blood alcohol test, blood, breath, or urine test CDS, or polygraph examination.
- .5 INVESTIGATOR RESPONSIBILITY: The investigator has the responsibility of fully investigating the complaint. This includes interviewing all complainants and witnesses, and collecting all evidence.
 - .1 The investigator will keep all reports, forms, notes, correspondence, etc. in an investigative file. The file will be kept by the investigator in a secure location.
 - .2 Any evidence which, due to size, type, etc., cannot be kept in the investigative case file will be logged into the evidence locker according to the same procedures used to log in criminal evidence. The IA Case Number will be entered on the property report as the complaint number.
- .6 OBTAINING MEDICAL RECORDS: If the medical records of anyone involved in the investigation are needed as part of the investigation, the investigator will request the person to sign a release of medical records form letter (form IA 07). The original will be sent to the addressee and a copy will be placed in the investigative file. NOTE: Some persons, including complainants, might refuse to allow the release of medical records. This does not necessarily mean that the investigation should end, nor will it preclude the investigator from using other legal means to obtain the records (e.g. a court order).
- .7 LABORATORY TESTS:
 - .1 If, pursuant to Public Safety Article, Title 3, an officer under investigation is ordered to submit to a blood alcohol test, blood, breath, or urine test for controlled dangerous substances, the investigator shall complete an ORDER TO SUBMIT TO LAB TEST (Form IA 08) and serve same on the officer. If a polygraph examination is to be ordered, an ORDER TO SUBMIT TO POLYGRAPH EXAMINATION (Form IA 09) will be completed and served on the officer. The originals will be placed in the investigative file and a copy will be given to the officer under investigation.
 - .2 Procedures for ordering civilian employees to submit to blood, breath, or urine tests are outlined in the City of Hagerstown Personnel Manual, Chapter XI. Civilian members may be ordered to submit to polygraph examinations.
- .8 COMPLAINANT/WITNESS STATEMENTS:
 - .1 Statements taken from complainants and witnesses will be taped. Statements do not have to be transcribed unless a hearing board is scheduled. Taped records of statements will be kept with the investigative file in the Internal Affairs Office. If a transcription is not made, the investigator will summarize the statement on Form IA40 (Report of Interview) or in the findings section of the investigative report to the Chief. If taping is not possible, the statements shall be dictated by the complainant/witness and recorded in writing verbatim.
 - .2 All statements, once transcribed, shall be submitted to the complainant/witness by the investigator for any corrections the individuals may wish to make. Each page of the statement will be initialed by the complainant/witness at the beginning and end of the print. The final page will be signed by the individual and witnessed by at least one witness in addition to the investigator.

- .3 At the beginning of the statement from each NON-HPD employee, the investigator will read form IA41 (Non-HPD Employee Witness Preamble) into the record. At the beginning of each statement from HPD Employee, the investigator will read from form IA42 (HPD Employee Witness Preamble) into the record.

- .9 STATEMENT OF OFFICER UNDER INVESTIGATION:
 - .1 Before an officer under investigation is interrogated or ordered to file any reports relative to the complaint investigation, the investigator will give the officer an INTERNAL INVESTIGATION ADVICE OF RIGHTS FORM (Form IA 10) to read and complete. The original will be put in the investigative file and a copy will be given to the officer. Every statement from every officer under investigation requires a separate Form IA 10. At least one witness in addition to the investigator shall witness the officer signing the form. NOTE: Reports relative to the complaint investigation do not include those reports normally required as a part of normal police duties.
 - .2 If the officer indicates that the interrogation is not being conducted during a reasonable hour and at a place agreeable to him/her, the investigator shall make a determination as to whether or not the officer is correct. If the investigator feels that the interrogation is being conducted during a reasonable hour and at a reasonable place as described in Public Safety Article, Title 3, he/she may proceed. If the interrogation is to be postponed at this point, a new Form IA 10 will be filled out before any interrogation begins.
 - .3 If the officer indicates he/she is not willing to make a statement without representation, he/she will be allowed up to 10 days (if necessary for the officer) to obtain same. If after 10 days the officer still does not have representation, he/she may be required to proceed. A new Form IA 10 will be filled out before any interrogation begins.
 - .4 If the officer indicates he/she is not prepared to proceed with the interrogation with his/her chosen representation present, the investigator will decide if the interrogation will proceed. The investigator may postpone the interrogation for just cause (e.g. officer or representative is ill). A new Form IA 10 will be filled out before any interrogation begins.
 - .5 All interrogations of officers under investigation will be taped. When the investigator is ready to begin taking the officer's statement, he shall complete, and read into the record, the STATEMENT OF MEMBER UNDER INVESTIGATION form (Form IA 11).
 - .6 All interrogations of officers under investigation, once transcribed, shall be submitted to the officer by the investigator for any corrections the officer may wish to make. Each page of the statement will be initialed by the officer at the beginning and end of the print. The final page will be signed by the officer and witnessed by at least one witness in addition to the investigator. The officer's statement will be placed in the investigative file only.
NOTE: the officer may correct transcription errors only; he MAY NOT change the content of the statement. If the officer wishes to make a change in the content of his statement, the investigator may take a new statement.
 - .7 Statements of sworn members under investigation do not have to be transcribed unless a hearing board is scheduled. Taped records of statements will be kept with the investigative file in the Internal Affairs Office. If a transcription is not made, the investigator will summarize the statement on Form IA41 or in the findings section of the investigative report to the Chief.

- .10 STATEMENT OF CIVILIAN UNDER INVESTIGATION: Civilians under investigation may be ordered to give statements which specifically relate to the subject matter of the investigation. There is no requirement to advise civilians of their right to be represented. However, if a civilian requests representation, he/she will be given up to 10 days to obtain same. The same procedure listed above in 34.7.9.5 and .6 pertaining to taking statements from officers also apply to taking statements from civilians.

- .11 INTERNAL INVESTIGATION REPORT/STATEMENT OF CHARGES: Once the investigator completes the complaint investigation, he/she will formal internal investigation report his/her findings in writing to the Chief of Police on the IA01 (and IA01a if additional pages are needed or supplemental information is being reported).
- .1 The findings will include the following:
- A summary of the investigation.
 - The investigator's finding of fact. This will be a brief statement as to what the investigator believes occurred based on the investigation. It should address those facts that are specific to the rules, regulations, policies, or procedures which are alleged to have been violated. If the investigator is unable to reach a finding of fact, he/she shall state so in the report.
 - The investigator's findings as to guilt or innocence of the member under investigation. For each alleged violation, one of the following dispositions shall be used:
 - UNFOUNDED: The investigation indicates that the act or acts complained of did not occur or failed to involve police personnel.
 - EXONERATED: Acts did occur but were justified, lawful and proper.
 - NOT SUSTAINED: Investigation fails to discover sufficient evidence to clearly prove or disprove the allegations made in the complaint.
 - SUSTAINED: The investigation disclosed sufficient evidence to clearly prove the allegations made in the complaint.
 - UNREPORTED MISCONDUCT: The investigation indicated the discovery of sustained acts of misconduct that were not alleged in the original complaint.
 - POLICY FAILURE: The investigation revealed that improper conduct occurred due to policy failure, that is the rule or policy violated was either statutorily outdated, ambiguously worded or not clear, or inconsistent with practical department operation. In the event this is the finding by the investigator, he shall include recommendations for correcting the impropriety.
- .2 If the investigator finds that any of the alleged violations are SUSTAINED, he/she will also prepare an Internal Affairs STATEMENT OF CHARGES form (Form IA 12, pages (a) and (b) and Form IA13 for additional charges) UNLESS:
- the officer is on probation and the allegation is not charging brutality, or
 - the investigator is recommending a non-punitive form of discipline.
- .3 Once completed, the investigator will forward the report and STATEMENT OF CHARGES, if any, with the entire case file to the Internal Affairs Administrator. There the report and STATEMENT OF CHARGES will be reviewed to ensure proper content and form are in accordance with Departmental procedures. If any corrections need to be made, the Internal Affairs Administrator will confer with the investigator.
- .4 After the review is completed and any necessary corrections are made, the Internal Affairs Administrator will forward a copy the report to the Chief of Police through official channels, for review.
- .12 CHIEF'S REVIEW OF INTERNAL INVESTIGATION: Once the Chief of Police receives the investigator's report, he will review it and make his decision as to the findings. At this point the Chief may agree or disagree with the investigator's determination of guilt or innocence, and the investigator's recommended penalty (if a recommendation is made).
- .1 If the Chief finds that the charge is other than sustained, or is sustained, with non-punitive discipline, the Chief may record his decision on the investigative report (IA39).

- .2 If the Chief finds the charge is sustained with punitive discipline, the Chief shall record his decision on the appropriate CHIEF'S DECISION ON INVESTIGATIVE FINDINGS form (Form IA 14 for sworn personnel and form IA 30 for civilian personnel). The member under investigation will be ordered to report to the Chief of Police at which time the Chief's decision will be explained to the member and he/she will be given the a copy of Form IA 14 or IA 30. A copy of the form will be forwarded to the investigator, and the original will go to the Internal Affairs Administrator to be placed in the investigative file. NOTE: If more than three charges were filed, the Chief's decision on the additional charges will be continued on Form IA 14A or Form IA 30A.
 - .3 If the Chief's finding is other than sustained, no penalty is to be imposed and the case is concluded at that point.
 - .4 If a penalty is to be imposed on a probationary officer and the allegation is not brutality, the Chief will complete a PROBATIONARY OFFICER RECORD OF DISCIPLINARY ACTION form (Form IA 15) in lieu of the Form IA 14. The officer will receive a copy, one copy will be forwarded to the investigator, one will be placed in the officer's personnel file, and the original will go to the Internal Affairs Administrator to be placed in the investigative file. The case is concluded at that point. NOTE: If more than three charges were filed, the Chief's decision on the additional charges will be continued on Form IA 15A.
 - .5 If a penalty is to be imposed on a probationary civilian, the Chief will complete a PROBATIONARY CIVILIAN RECORD OF DISCIPLINARY ACTION form (Form IA 31) in lieu of Form IA 30. The civilian will receive the a copy, one copy will be forwarded to the investigator, one will be placed in the civilian's personnel file, and the original will go to the Internal Affairs Administrator to be placed in the investigative file. The case is concluded at that point. NOTE: If more than three charges were filed, the Chief's decision on the additional charges will be continued on Form IA 31A.
 - .6 If a penalty is to be imposed on a non-probationary officer, the officer may waive a hearing and accept the penalty. If he elects this, the Chief will prepare a WAIVER OF LAW ENFORCEMENT OFFICERS' BILL OF RIGHTS AND ACCEPTANCE OF PUNISHMENT (Form IA 16) and have the officer sign same. The original will be forwarded to the Internal Affairs Administrator to be placed in the investigative file, one copy will be forwarded to the investigator, one will be given to the officer, and one will be placed in the officer's personnel file.
 - .7 If the penalty to be imposed on a non-probationary officer falls within the definition of summary punishment (i.e. not exceeding 3 days suspension without pay or \$150 fine), the officer may elect not to accept the punishment without disputing the facts. If this is the case, the officer will check the appropriate block on the Form IA 13 and the subsequent hearing board shall only have the authority to recommend the sanctions as provided in the Law Enforcement Officers' Bill of Rights for summary punishment.
 - .8 If a penalty is to be imposed on a non-probationary civilian member, the member will have to follow the appropriate grievance procedure to appeal the decision.
- .13 SCHEDULING HEARING BOARDS: In the event an officer under investigation does not wish to waive a hearing and accept the penalty to be imposed by the Chief, a hearing board will be scheduled. The Internal Affairs Administrator will contact the City Attorney to discuss possible hearing dates. At that time the Internal Affairs Administrator will forward a copy of the entire case file to the City attorney. Once the date is decided upon, the Chief will complete the NOTIFICATION OF ADMINISTRATIVE HEARING BOARD form (Form IA 17) and give a copy to the officer. The original will be forwarded to the Internal Affairs Administrator to be put in the investigative file, one copy will go to the investigator and one will go to the City Attorney.
- .14 SELECTION OF HEARING BOARD: After the hearing board date is set, the Chief of Police will select a hearing board and complete a HEARING BOARD APPOINTMENT/ NOTICE form (Form IA 18). Copies will be provided to all members of the hearing board, the City Attorney, the officer. The original will go to the Internal Affairs Administrator to be placed in the investigative file. At the same time, all the hearing board members will be provided access to an ADMINISTRATION OF DISCIPLINE HEARING MANUAL.

- .15 HEARING BOARD SUMMONSES:
- .1 Once the investigator receives a copy of the NOTIFICATION OF ADMINISTRATIVE HEARING BOARD form (Form IA 17), he/she will have the responsibility to contact the City Attorney and arrange a meeting to review the case and determine which witnesses and documents need to be summoned.
 - .2 The investigator will be responsible for ensuring requests for witness summons/duces tecum are submitted either to the Chief of Police or the chairman of the hearing board.
 - .3 Upon receipt of the request for witness summons/duces tecum, the Chief or hearing board chairman will prepare a WITNESS SUMMONS/DUCES TECUM form (Form IA 19). The Chief or hearing board chairman will see that the summonses are served, or that an attempt is made to serve them.
 - .4 All summonses for persons residing within the city limits will be served by this Department.
 - .5 All summonses for persons residing outside the city limits may either be served by the Washington County Sheriff's Department, other law enforcement agency, or private process server. The WCSD will be requested to serve the summons first before any other requests for service are made.
 - .6 Summonses may only be served on the individual summoned. The officer serving the summons will have the person summoned sign the summons. If the person refuses to sign, a notation will be made and the summons returned to the hearing board chairman or Chief of Police.
- .16 CHIEF'S DECISION ON HEARING BOARD RECOMMENDATIONS:
- .1 If the officer is found not guilty by the hearing board, the case is concluded at that point.
 - .2 If the officer is found guilty by the hearing board, the Chief will review the hearing board's final written report and recommendations for penalty. Within 30 days of receipt of the board's recommendation the Chief will complete the CHIEF'S DECISION ON HEARING BOARD RECOMMENDATIONS form (Form IA 21) and provide a copy to the officer. The original will be forwarded to the Internal Affairs Administrator to be placed in the investigative file, one copy will go to the investigator, and one will go in the officer's personnel file. Except for dismissal, the punishment shall not be administered until after the appropriate appeal time limit according to the Maryland Rules of Procedure, Chapter 1100, Rule B-2, Annotated Code of Maryland. All dismissals shall be effective at the time the Chief renders his decision. The case is concluded at that point.
- .17 WITHDRAWAL OF COMPLAINT: If at any point in the investigation the complainant wishes to withdraw the complaint, the investigator will have the complainant complete the WITHDRAWAL OF COMPLAINT AGAINST DEPARTMENT PERSONNEL form (Form IA 22). If the complainant cannot or will not come in to complete the form, the investigator will complete the appropriate section on the form. The investigator will have to determine at that time, based on the facts at hand, if the investigation should be continued.
- .18 UNCOOPERATIVE COMPLAINANT: If a complainant fails to keep an appointment which is necessary to continue the investigation, the investigator will send the complainant form letter Form IA 23. This letter gives the complainant 7 working days from the date of the letter to contact the investigator. If the complainant does not make contact, the investigation is concluded.

- .19 CONCLUSION OF INVESTIGATION: At any point where the investigation or case is concluded, the following steps will be taken:
 - .1 The Internal Affairs Administrator will contact the complainant via letter advising them of the findings and a copy of this letter is to be placed in the investigative file.
 - .2 The final disposition will be entered on the COMPLAINT AGAINST PERSONNEL REPORT (Form IA 01) either by the Internal Affairs Administrator or the investigator, depending on who has the form at that point in the investigation.
 - .3 The Internal Affairs Administrator will enter the final disposition on the MASTER COMPLAINT LOG (Form IA 02) and the INDIVIDUAL OFFICER'S COMPLAINT LOG (Form IA 03).
 - .4 The entire investigative file will be secured in one of the locked filing cabinets in the Internal Affairs Office.
 - .5 Cassette or video tapes used during the investigation will be erased and placed in service for re-use 30 days after the final adjudication of the case. Note: Final Adjudication could range from an accepted guilty plea to the final verdict of a court.

34.8 PLEA BARGAINING

- .1 Plea bargaining between the Department and accused officer may occur at any time after the Chief receives the investigator's report and makes his decision as to findings and penalty. Limits on plea bargaining will be set by the Chief of Police prior to discussion with the accused officer or his representative. Guidelines for discussing and accepting plea agreements are found in the ADMINISTRATION OF DISCIPLINE HEARING MANUAL.
- .2 If a plea agreement is reached, the Chief will complete a WAIVER OF LAW ENFORCEMENT OFFICER'S BILL OF RIGHTS AND ACCEPTANCE OF PUNISHMENT (Form IA 16) and the officer will sign same. The original will be forwarded to the Internal Affairs Administrator to be placed in the investigative file, a copy will be forwarded to the investigator, one will be given to the officer, and one will be placed in the officer's personnel file. The case is concluded at that point.

34.9 INVESTIGATIVE PROCEDURES FOR ALCOHOL VIOLATIONS.

If a member has been accused of violating any Departmental Rules or Regulations relating to the use of alcoholic beverages or substances while on duty, and a discernible presence of indulgence in alcoholic beverages or substances exists, the following procedure shall apply:

- .1 The investigating officer will note the appearance and demeanor of the accused and record same in the internal investigation report.
- .2 The accused will be required to submit to a visual test, the results of which will be reported on an Alcohol Influence Report form.
- .3 The accused will be required to submit to a breath test to determine the alcohol content of his blood.
- .4 The lapse of time expressed in minutes between the initial report or observation of the member's condition and the breath test will be accurately recorded. Breath tests will be administered by Departmental breath test operators as soon as feasible after initiation of the allegation. The two- hour limit as outlined in the Transportation Article of the Annotated Code of Maryland is not applicable.
- .5 The accused will be placed on an emergency suspension following Department procedure.

34.10 INVESTIGATIVE PROCEDURES FOR CDS VIOLATIONS

If reasonable suspicion exists that a member has used Controlled Dangerous Substances as defined in the CDS Act, the following procedure shall be followed;

- .1 The investigating officer will note the appearance and demeanor of the accused and record same in the internal investigation report.
- .2 The accused will be accompanied by the investigating officer to the hospital where an examination will be conducted by competent medical personnel to determine the presence or absence of physical evidence of abuse.
- .3 The accused will be brought back to Headquarters and ordered to submit to the collection of urine samples.
 - .1 The samples will be collected either by the Department Chemist or the investigating officer. The Chemist is preferred and will be called in if he is not on duty and can be reached.
 - .2 Two samples will be collected in sterile sample collection cups. Enough will be collected to fill each cup at least halfway. This will be done in the presence of the person collecting the samples. If the accused is of the opposite sex of the person collecting the samples, they will be collected by an officer of the same sex (supervisor preferred).
 - .3 The person collecting the samples will label the cups with the name of the accused, the date and time collected, and the name of the person collecting the samples. The cups will also be labeled 1 and 2.
 - .4 The person collecting the samples will seal each with evidence tape and initial and date the tape.
 - .5 Both samples will be sealed in a tamper proof evidence bag and labeled appropriately. A Property Record will be completed at that time.
 - .6 The samples will be given to either the Chemist or evidence custodian to be placed in the freezer in the evidence room until they can be submitted for analysis. If they are not on duty, the chemist or evidence custodian will be called in for this at the time the samples are collected. If neither are available, a CIU supervisor be notified.
 - .7 The Department Chemist or evidence custodian will see that the sample is submitted to a NIDA approved lab for testing as soon as practical. When the results are received, he/she will see that they are given to the investigating officer.
- .4 The accused will be placed on an emergency suspension according to Department procedures.

34.11 REQUIRED EMPLOYEE COOPERATION WITH INVESTIGATIONS

- .1 LAB TESTS:
 - .1 Any sworn officer may be required to submit to laboratory testing to resolve an allegation against said employee when such testing is specifically, directly, and narrowly related to a particular internal affairs investigation being conducted by the department. Laboratory testing can include chemical/quantitative analysis of the employee's blood, breath, urine, and/or other body fluids as deemed appropriate within the context of said investigation.

Results of all laboratory tests will be included in the final investigative report. Examples of allegations which may require laboratory testing may include, but are not limited to:

- Suspected on duty intoxication through the use of alcohol or drugs.
 - Suspected on duty impairment from use of prescribed medication.
 - Suspected use of illicit drugs.
 - Suspected sexual misconduct relative to the exchange of body fluids.
- .2 Civilian members may be required to submit to laboratory testing pursuant to the provisions in Chapter XI of the City of Hagerstown Personnel Manual.

- .2 PHOTOGRAPHS AND LINEUPS: Employees may be required to submit to being photographed for the Internal Affairs Photo Lineup book, and as deemed necessary, stand in a physical lineup when same is required for identification purposes during an internal affairs investigation.
- .3 FINANCIAL DISCLOSURE: Employees may be required to submit financial disclosure statements as part of an internal investigation when such disclosure may be relevant to the investigation.
- .4 POLYGRAPHS:
 - .1 Employees may be required to submit to polygraph examinations. On these occasions, the results of the examinations cannot be used as evidence in any administrative hearing unless the officer and the Department agree.
 - .2 Employees may voluntarily submit to polygraph examinations. Results of voluntary exams are admissible in administrative hearings.
 - .3 The results of polygraph examinations are not admissible in criminal proceedings, even by stipulation.
 - .4 The law enforcement officer's representative need not be present during the actual administration of a polygraph examination by a certified polygraph examiner, if:
 - the questions to be asked are reviewed with the law enforcement officer or his representative prior to the administration of the examination;
 - the representative is allowed to observe the administration of the polygraph examination;
 - and, a copy of the final report of the examination by the certified polygraph operator is made available to the law enforcement officer or his representative within ten days after the completion of the examination Public Safety Article, Title 3; or
 - the officer or representative waives the right to have the representative present.
 - .5 Polygraph examinations will be conducted by a qualified examiner in accordance with the standards and rules of the American Polygraph Association and Federal and State Laws.
- .5 STATEMENTS AND REPORTS: During a complaint investigation, any member, regardless of rank, may be required by the investigator to submit written reports and/or answer all questions which relate to the subject matter of the investigation.
- .6 FAILURE TO COOPERATE: In event a member being questioned as a witness refuses to give a statement answer a question, or submit a written report, or a member under investigation refuses to cooperate with the investigation as required above, the investigator will direct the member to do so under a direct order. If the member refuses to obey the order, he/she is subject to being charged with insubordination (Rules and Regulations section 3.13.1) and failure to obey a lawful order (Rules and Regulations section 3.13.3), and he/she will be advised of this fact.

34.12 FORMS OF PUNITIVE ACTION

- .1 Punitive action may fall into one or more of the following categories:
 - .1 Reduction of leave
 - .2 Monetary fine
 - .3 Suspension without pay
 - .4 Demotion
 - .5 Dismissal
- .2 Department standards of conduct and performance will be enforced in a uniform and consistent manner. Disciplinary measures taken will be based upon the seriousness of the charge and the total circumstances involved.
- .3 Disciplinary action taken against civilians must be within the limits enumerated in the City of Hagerstown Personnel Manual.

34.13 SUSPENSIONS FROM DUTY

- .1 The authority to suspend in emergency situations is delegated to the rank of Sergeant or above, and/or personnel acting in this capacity, except as described in the next section (34.13.2).
- .2 Only the Chief of Police or designee or City Administrator or designee may suspend a member with the rank of Captain. Only the City Administrator or designee may suspend the Chief of Police.
- .3 EMERGENCY SUSPENSIONS:
 - .1 A member who reports for work intoxicated or otherwise unfit or unprepared for work, or whose conduct on the job is detrimental to the service may be suspended immediately with or without pay for a period not to exceed three (3) days.
 - .2 The supervisor imposing the emergency suspension will complete an EMERGENCY SUSPENSION FROM DUTY NOTIFICATION form (Form IA 26 for sworn personnel and Form IA 32 for civilian personnel) and furnish a copy to the affected member immediately. A copy will be forwarded to the member's commanding officer, and the original will be forwarded to the Internal Affairs Administrator to be filed with the subsequent investigative file.
 - .3 A member receiving an emergency suspension shall be required to report to the Chief of Police, or his designee, for a suspension review on the next business day at 0900 unless otherwise directed by the supervisor imposing the suspension. The supervisor imposing the suspension shall also report to the Chief of Police, or his designee, at the same time. The Chief, or his designee, shall make a determination as to the duration of the emergency suspension pending final disposition of the charge(s), and whether other employment or leave status alternatives should be considered. At this suspension review, the member may:
 - be accompanied by counsel; however, only matters dealing directly with the determination of the suspension will be heard;
 - rebut the reason(s) given for the suspension;
 - present mitigating testimony; and
 - suggest alternatives to the suspension.
 - .4 Sworn members may be suspended with or without pay pursuant to Public Safety Article, Title 3.
 - .5 When the emergency suspension is withdrawn, the Chief of Police or his designee will complete the WITHDRAWAL OF EMERGENCY SUSPENSION FROM DUTY form (Form IA 27 for sworn personnel and Form IA 33 for civilian personnel) and furnish a copy to the member. A copy will be forwarded to the member's commanding officer, and the original will be forwarded to the Internal Affairs Administrator to be placed in the investigative file.
- .4 PUNITIVE SUSPENSIONS: If a member is to suffer a suspension as a punitive measure resulting from a complaint investigation, the Chief of Police will complete a SUSPENSION FROM DUTY NOTIFICATION form (Form IA 28 for sworn personnel and Form IA 34 for civilian personnel) and furnish a copy to the suspended member. One copy will be forwarded to the member's commanding officer, and The original will be forwarded to the Internal Affairs Administrator to be placed in the investigative file. NOTE: The Chief will consult with the member's commanding officer to determine the most feasible dates and times for the suspension.

34.14 DISMISSAL FROM EMPLOYMENT

- .1 If an investigation of officer misconduct results in dismissal, the following information will be provided to the member:
 - .1 A statement citing the reason for dismissal.
 - .2 The effective date of the dismissal.
 - .3 A statement of the status of fringe and retirement benefits after dismissal.
 - .4 A statement as to the content of the member's employment record relating to the dismissal.

34.15 FORMS OF NON PUNITIVE ACTION

- .1 Non punitive action may fall into one or more of the following categories:
 - .1 Written reprimand
 - .2 Counseling statement
 - .3 Training
 - .4 Verbal reprimand or verbal warning

34.16 WRITTEN REPRIMAND - LETTER IN I.A. FILE

- .1 Can only be used when formal charges (Form I.A. 12) are placed.

34.17 COUNSELING AS A FUNCTION OF DISCIPLINE

- .1 Counseling is assisting employees in the process of problem-solving. It may be corrective or preventative in nature.
- .2 Counseling may focus on the necessity for a person to change his/her present behavior, or work methods.
- .3 Counseling may focus of a disciplinary problem which may be handled in a positive manner by itself, or with other disciplinary measures.
- .4 Counseling may focus on the necessity for a person to behave differently in preparation for responsibilities and challenges that lie ahead.
- .5 Should circumstances dictate that counseling shall be used as a step to correct an employee's deficiencies as determined by a supervisor, the Department COUNSELING STATEMENT (Form IA 29) will be utilized. The purpose of the Counseling Statement is to notify an employee of his/her deficiency in conduct or performance, give the employee an appropriate amount of time to improve the conduct or performance, and to document both. The Counseling Statement is not a punitive action.
- .6 The counseling statement provides for the following:
 - .1 Allows supervisors to give constructive criticism to employees whose conduct/performance is not up to Departmental standards (Step One).
 - .2 Sets a time limit for improvement.
 - .3 Provides historical documentation for any future punitive action resulting from subsequent deficiencies of the same nature (Step Two). In such cases, the punitive action would not be taken as a result of deficiencies noted in the previous Counseling Statements. Instead, those Counseling Statements would only be used to show that the member was made aware of his/her deficiencies.
- .7 The counseling statement can only be used when no formal charges (Form IA 12) have been placed.

34.18 TRAINING AS A FUNCTION OF DISCIPLINE

- .1 An member's acts which are committed because he/she either misunderstood procedures or was never made aware of the correct action are indicators of training needs. These needs may be corrected by remedial training programs.
- .2 Remedial training is personalized training to correct a specific deficiency which is usually identified either by testing, evaluations during training, or by a supervisor evaluating an employee during routine job performance, or by acts requiring disciplinary actions.

- .3 Internal investigations should analyze information to determine training needs in identifying undesirable behavior trends of those individuals in need of retraining.
- .4 Training may be used as part of the department's disciplinary system by itself, or with other disciplinary procedure determined by the Chief of Police.
- .5 An employee may be assigned to remedial training upon recommendation from an internal affairs investigator to the Chief of Police during a disciplinary investigation, or by the Chief of Police as a positive measure to correct a deficiency.
- .6 In a non-punitive action, an employee may be assigned to remedial training if his/her supervisor recommends the process to correct a lack of skill, knowledge, or abilities to perform his assigned tasks. Such recommendations shall be recorded on an employee COUNSELING STATEMENT (Form IA 29).
- .7 Upon completion of any remedial training program, participants shall be evaluated to determine whether or not existing deficiencies were alleviated. Results of the evaluation shall be forwarded through the chain of command to the Chief of Police.

34.19 RESERVED

34.20 INVESTIGATIVE TIME LIMITS

- .1 Internal investigations will be conducted as thoroughly and speedily as is possible. All investigations will be completed within 30 days after the formal notification of an investigation is served on the violator. An investigation is considered complete at the time the violator is formally charged or, in the event no charges will be filed, when the investigative report is submitted to the Chief of Police. Since extensions beyond the 30 day restriction may be necessary under certain conditions (waiting for laboratory results, inaccessibility of important documents within the 30 day limit, new violations are uncovered during the investigation, etc.), an extension may be granted by the Chief of Police. The general rule for granting extensions is that the request must be reasonable and the extension will prove important in determining the officer's guilt or innocence.
- .2 Request for extensions will be made in writing to the Chief of Police. Approval for extensions will be made in writing to the investigator and the officer under investigation. **NOTE:** The 30 day restriction applies to the investigating officer. If the investigation is not completed in 30 days and no extension has been requested, the investigating officer may be subject to disciplinary action under this section. This does not in any way affect or dismiss the charges of the original investigation.

34.21 CONFIDENTIALITY OF INTERNAL INVESTIGATIONS

Confidentiality of internal investigations is paramount. For this reason, the following guidelines will be strictly followed:

- .1 All internal affairs records are confidential and as such will be kept secured in the Internal Affairs office and in the Administrative offices. Internal investigation are considered personnel matters and therefore are not subject to public review in general.
- .2 Investigators are authorized to maintain copies of documentation from investigations they conduct. The investigator will treat all information and documentation as confidential materials and as such keep same in a secure location not readily available to other persons.
- .3 With the exception of the Chief of Police, Internal Affairs investigators, the City Attorney, and the investigating officer, no one shall have access to internal investigation files unless authority is granted from the Chief of Police or the Internal Affairs Administrator.

- .4 Once the investigation is complete and the findings and recommendations approved by the Chief of Police, sworn members may access those portions of the file to which they are entitled under the provisions of the Law Enforcement Officer's Bill of Rights.
- .5 Any department member interviewed as a violator or witness in any internal investigation will consider his/her testimony confidential and will not reveal its contents to anyone other than the investigator assigned to the case.

NOTE: For clarification purposes, once an internal investigation is concluded, and a final recommendation has been given by the Departmental Investigator to the Chief of Police, any Departmental witnesses may, in their discretion, speak to a departmentally alleged violator or an alleged violator's representative regarding the witnesses' knowledge of the facts of the investigation. Departmental witnesses may refuse to discuss the case or facts with the alleged violator or his/her representative if they so desire. This clarification is not meant to authorize a breach of the confidentiality that surrounds internal investigations. The sole purpose is to clarify an alleged violator's right to question Departmental personnel at the conclusion of internal investigations, and provide guidelines to Departmental witnesses to provide answers if they so desire.

34.22 INTERNAL INVESTIGATION STATISTICAL SUMMARIES

Annually, the Internal Affairs Administrator will compile statistical data based on the records of internal investigations and supply same to the Support Services Administrator for inclusion in the City Weekly Report.

34.23 ADMINISTRATIVE HEARING BOARD: PURPOSE

The Administrative Hearing Board conducts administrative hearings, convened at the direction of the Chief of Police, to hear charges against Police Department personnel and bring forth to the Chief of Police a finding of fact concerning the charges at hand and to recommend a course of action, subject to review by the Chief of Police.

34.24 ADMINISTRATIVE HEARING BOARD COMPOSITION

The Administrative Hearing Board is a board which is authorized by the Chief of Police to hold a hearing on a complaint against a law enforcement officer and which consists of no less than three (3) members, except as provided in Public Safety Article, Title 3. All members are to be appointed by the Chief and selected from law enforcement officers within that agency or law enforcement officers of another agency with the approval of the Chief of the other agency, and who have no part in the investigation or interrogations of the law enforcement officer. At least one member of the Hearing Board shall be of the same rank as the law enforcement officer against whom the complaint has been filed. One member of the Administrative Hearing Board shall be designated the Chairman of the Hearing Board.

34.25 ADMINISTRATIVE HEARING BOARD RESPONSIBILITIES

- .1 The hearing board will be conducted following the procedures outlined on the HEARING BOARD PROCEDURE form (Form IA 20).
- .2 It is the duty of the Administrative Hearing Board to investigate the truth or falsity of charges made against sworn personnel. Said investigation to be made upon the information of investigative reports, statements, documents, testimony of witnesses and such other evidence that it deems appropriate.
- .3 All members of the Board shall participate in deliberation and shall vote to determine a verdict and recommendations.
- .4 In rendering a verdict, a majority opinion will hold. A unanimous opinion is not required.

- .5 A hearing by the Administrative Hearing Board is a quasi-judicial proceeding, and as such should be conducted in adherence to appropriate guidelines and atmosphere. It is true that the proceeding should be conducted with a certain amount of informality; however, a set agenda and definite rules of procedure should be established and explained to the parties at the opening of the hearing.
- .6 No firearms will be permitted in the hearing board room.

34.26 DECISIONS/FINDINGS OF THE BOARD

- .1 Cases presented to a hearing board are administrative proceedings and as such are not subject to the same rules of evidence which govern the conduct of criminal proceedings. Although testimony must bear only on facts concerning the instant case, the restrictions applicable to hearsay evidence, written statements, and other forms of evidence in criminal actions, do not apply to administrative hearings.
- .2 Evidence which possesses probative value, commonly accepted by reasonable and prudent persons in the conduct of their affairs, shall be admissible and shall be given probative effect. The hearing board shall give effect to the rules of privilege recognized by law and shall exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence. All records and documents which any party desires to use shall be offered and be made a part of the record. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.
- .3 The hearing board may take notice of judicially cognizable facts within its specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material so noticed, and they shall be afforded an opportunity and reasonable time to contest the facts so noticed. A hearing board may use its experience, technical competence, and specialized knowledge in evaluating the evidence presented.
- .4 In connection with the matter of maintaining discipline in a police department, it must be remembered that this is a matter having to do with employment. Because policemen deal with violations of criminal law, and because with criminal law there is a requirement of proof beyond reasonable doubt, there is a tendency to confuse violations of employment regulations with violations of criminal law. They are by no means the same. A violation of criminal law might involve loss of life or liberty and, consequently, the serious nature of the penalty requires proof beyond reasonable doubt. Disciplinary actions contemplate, at the very most, dismissal of a person from a job. Usually considerably less is involved. Neither his life nor his liberty is placed in jeopardy. Thus, disciplinary action is an employment situation in governmental as well as private employment, and should require only the test of a preponderance of the evidence, not proof beyond a reasonable doubt.

("Preponderance" used in connection with the weight of the evidence refers to something more than the number of witnesses who furnish it. It relates not only to the number of witnesses who testify but also to the character of witnesses, the intrinsic characteristics of the evidence itself, and the probabilities of its truth when tested by the ordinary experience of average people in their daily affairs.)

- .5 Any decisions and/or recommendations of the Hearing Board shall be in writing and shall be accompanied by findings of fact. The findings shall consist of a concise statement upon each issue in the case. Findings should be made as a matter of principle. This is important for several reasons. The case may be subject to further review, and a more intelligent review is thus made possible. Findings apprise the parties of the basis for the decision, and, finally, a statement of findings fosters the belief that matters were carefully considered. The members of the Board during their deliberations should consider the evidence related to it and come to a conclusion as to whether it is true or untrue. Also, the Board should include in its findings whether the following occurred:
 - Proper conduct
 - Improper conduct
 - Policy failure
 - Insufficient evidence
 - Unfounded complaint
- .6 A copy of the decision or recommendation and accompanying findings and conclusions, along with written recommendations for action, shall be delivered or mailed promptly to the law enforcement officer or to his attorney or representative of record.

34.27 ADMINISTRATIVE HEARING BOARD CHAIRMAN--DUTIES AND RESPONSIBILITIES

- .1 The Administrative Hearing Board Chairman will be a command officer appointed by the Chief of Police.
- .2 The Administrative Hearing Board Chairman will preside over the Administrative Hearing Board proceeding and decide any questions of procedure, acceptability of evidence, relevancy of evidence, and all other related matters and objections.
- .3 It shall be the responsibility of the Chairman to describe the reason the Administrative Hearing Board is being convened, under whose authority it is being convened, the name of the subject officer and the charges to be presented.
- .4 The Administrative Hearing Board Chairman has the authority delegated to him by the Chief of Police to administer oaths or affirmations and examine any individual under oath pursuant to the Hearing.
- .5 The Board may, if so directed by the Chairman, require the subject officer to answer questions specifically, directly and narrowly relating to the performance of his official duties.
 - .1 Should the officer fail to answer the questions directly and narrowly, he will be given a direct order by the Chairman to do so.
 - .2 Should the officer disobey the direct order he will be suspended and further charged with insubordination.
 - .3 The United States Supreme Court in the following cases has indicated support for dismissal under circumstances.
SPEAK V. KLINE, 385 U.S. 511, 17L, Ed. 2d 5 74 (1967). Concurring Majority Opinion of Fortas,J.
GARDNER V. BRODERICK, 392 U.S. 273, 20L, ed. 2d 1082 88S. Ct. 1913 (1968)-Dicta in Majority Opinion of Fortas, Jr.
GARRITY V.N.J., 385 U.S. 493, 17L. Ed.2d. 582 (1967)
- .6 The Administrative Hearing Board Chairman will be responsible for apprising the Chief of Police of the Board's findings and recommendations. The Chief will be advised of the vote in writing.

- .7 The Administrative Hearing Board Chairman shall keep an official record of each hearing, which shall become a part of the original case file. The record shall include testimony, exhibits, the exact times the hearing was convened and terminated, and the exact times of the beginning and termination of each recess taken during the hearing. The chairman of the hearing board is also responsible for tape recording all hearings. The tapes shall become a permanent part of the record.
- .8 In setting forth the duties of the Administrative Hearing Board Chairman, it is to be understood that it is not feasible to enumerate all the decisions, rulings and findings he may be called upon to make from time to time. The Chairman will make the needed ruling as the need arises, said ruling to be made according to his knowledge and objective; keeping in mind the relevancy of the problem at hand.

34.28 PRIVILEGES OF THE SUBJECT OFFICER

- .1 Any officer appearing before the Administrative Hearing Board shall have the right to testify, to call witnesses, and to cross examine opposing witnesses.
- .2 Any officer subject to a hearing before the Administrative Hearing Board, shall have the right to be assisted at said Hearing by anyone of his choosing. Counsel may be an attorney, employee of this Department, or any other responsible individual or employee organization chosen to represent the accused, excluding members of the hearing board or witnesses in the case. Should the officer choose a member of the Department, that member shall have the right to decline.
- .3 If the accused officer expresses a desire to plead guilty and proceed on a statement of facts, but desires the hearing board to decide the penalty, the prosecutor will notify the hearing board chairman as to that fact. If time permits, the chairman of the hearing board will notify nonessential witnesses that they will no longer be required to testify. The hearing board will then convene to receive the guilty plea, hear the statement of facts, and conduct the penalty phase of the proceeding.

34.29 APPEALS

- .1 An administrative hearing is not a judicial proceeding and requires, on appeal, only that the Department's findings be supported by competent, material, and substantial evidence that the action of the board is not arbitrary, capricious or illegal.
- .2 Appeals from decisions rendered in accordance with the LEOBOR shall be taken to the Circuit court pursuant to the Maryland Rules of Procedure, Chapter 1100, Rule B-2, Annotated Code of Maryland. Such appeals shall be filed within the time limits set forth in the Maryland Rules of Procedure, Chapter 1100, Rule B-4. Any party aggrieved by a decision of a court under this Section may appeal to the Court of Special Appeals. For the purpose of appeals to the Circuit court, the final action shall be the date of the Chief's Decision on the hearing board's recommendations.

34.30 MAINTENANCE OF RECORDS OF DISCIPLINARY ACTION

All records of disciplinary actions shall be kept on file permanently except under the following conditions:

- .1 Records of unfounded, unsustainable or exonerated complaints against an officer, or those resulting in acquittal, dismissal, or finding of not guilty by a hearing board, will automatically be expunged from all files three years after such disposition is made.* This will include official internal investigation paper files, investigator's personal notes, taped statements, computer records, and any other documentation of the complaint.
- .2 Records of non-punitive actions resulting from sustained complaints against an officer will automatically be expunged from employee personnel files one year after such disposition is made. Internal Affairs files will not be expunged. Counseling statements will remain with the employee's annual performance evaluation. Training records will remain with the training files.

34.31 DISSEMINATION OF INTERNAL INVESTIGATIONS FILES

- .1 The Chief of Police, the City Attorney and any supervisor routinely assigned to internal investigation duties may have complete access to all internal investigation files.
- .2 Other officers conducting internal investigations and other persons acting as prosecutor for the City of Hagerstown may have complete access to those internal investigation files with which they are involved.
- .3 Upon completion of an internal investigation, sworn members may have access to those portions of internal investigations files authorized by the Law Enforcement Officers' Bill of Rights. In such cases the officer will sign the CONFIDENTIALITY AGREEMENT AND RECEIPT (Form IA 35). The original will go into the investigative file, and a copy will be given to the officer.
- .4 Any requests by officers under investigation to view internal investigation material will be submitted in writing by the requesting party to the Internal Affairs Administrator. After the request is approved by the Internal Affairs Administrator, and he/she determines which material may be disseminated to the officer, any supervisor routinely assigned to internal investigation duties may disseminate the material.
- .5 Any other person not specifically enumerated above wishing access to an internal investigation file must request same by filing a freedom of information request through the office of the Chief of Police.
- .6 Anytime an internal investigation file or information from such a file is disseminated, the person authorizing the dissemination will ensure that a DISSEMINATION LOG (Form IA 36) is completed. The person receiving the information and the person authorizing the dissemination will sign in the appropriate places on the log. The original will be kept in the Internal Affairs Office in a Dissemination Log file. A copy will go into the investigative file.

34.32 REPRODUCTION COSTS

- .1 Reproduction costs shall be assessed at the rate designated in the fee schedule section of the annual City Administrator's Budget.

34.33 LAW-ENFORCEMENT OFFICERS' BILL OF RIGHTS

Refer to the Public Safety Article, Title 3.

LIST OF FORMS USED FOR COMPLAINT INVESTIGATIONS/DISCIPLINARY ACTIONS

FORM NO.	FORM NAME	ORIGINAL	COPIES
IA 01	Complaint Against Personnel Report	Investigative File	Internal Affairs
IA 02	Master Complaint Log	Internal Affairs	
IA 03	Individual Officer's Complaint Log	Internal Affairs	
IA 04	Complaint of Brutality	Investigative File	
IA 05	Verification of Receipt of Complaint For Letter	Complainant	Investigative File
IA 06	Notification of Complaint/Investigation (Sworn Personnel)	Investigative File	Officer Under Investigation
IA 07	Release of Medical Records Form Letter	Addressee	Investigative File
IA 08	Order to Submit to Lab Test	Investigative File	Officer Under Investigation
IA 09	Order to Order to Submit to Polygraph Examination	Investigative File	Officer Under Investigation
IA 10	Internal Investigation Advice of Rights	Investigative File	Officer Under Investigation
IA 11	Statement of Member Under Investigation	Investigative File	
IA 12	Statement of Charges	Investigative File	Member Under Investigation
IA 13	Statement of Charges Continuation Sheet	Investigative File	Member Under Investigation
IA 14	Chief's Decision on Investigative Findings (Sworn Personnel)	Investigative File	Officer Under Investigation, Investigator
IA 14A	Chief's Decision on Investigative Findings - (Sworn Personnel) Continued	Investigative File	Officer Under Investigation, Investigator
IA 15	Probationary Officer Record of Disciplinary Action	Investigative File	Officer Under Investigation, Investigator, Officer's Personnel File
IA 15A	Probationary Officer Record of Disciplinary Action - Continued	Investigative File	Officer Under Investigation, Investigator, Officer's Personnel File
IA 16	Waiver of Law Enforcement Officers' Bill of Rights and Acceptance of Punishment	Investigative File	Officer Under Investigation, Investigator, Officer's Personnel File
IA 17	Notification of Administrative Hearing Board	Investigative File	Officer Under Investigation, Investigator, City Attorney
IA 18	Hearing Board Appointment Notice	Investigative File	Officer Under Investigation, All Hearing Board Members, City Attorney, Investigator
IA 19	Witness Summons/Duces Tecum	Hearing Board Chairman	Person Summoned, Person Requesting Summons
IA 20	Hearing Board Procedure	Hearing Board Chairman	

FORM NO.	FORM NAME	ORIGINAL	COPIES
IA 21	Chief's Decision on Hearing Board Recommendations	Investigative File	Officer Under Investigation, Investigator, Officer's Personnel File
IA 22	Withdrawal of Complaint Against Department Personnel	Investigative File	Complainant
IA 23	Failure of Complainant to Keep Scheduled Appointment Form Letter	Complainant	Investigative File
IA24/25	DELETED		
IA 26	Emergency Suspension From Duty Notification (Sworn Personnel)	Investigative File	Officer Under Investigation, Officer's Commanding Officer, Chief
IA 27	Withdrawal of Emergency Suspension From Duty (Sworn Personnel)	Investigative File	Officer Under Investigation, Officer's Commanding Officer
IA 28	Suspension From Duty Notification (Sworn Personnel)	Investigative File	Officer Under Investigation, Officer's Commanding Officer
IA 29	Counseling Statement	Issuing Supervisor	Member, Administrative File
IA 30	Chief's Decision on Investigative Findings (Civilian Personnel)	Investigative File	Civilian Under Investigation, Investigating Officer
IA 30A	Chief's Decision on Investigative Finding - Civilian Personnel (Continued)	Investigative File	Civilian Under Investigation, Investigating Officer
IA 31	Probationary Civilian Record of Disciplinary Action	Investigative File	Civilian Under Investigation, Investigator, Civilian's Personnel File
IA 31A	Probationary Civilian Record of Disciplinary Action (Continued)	Investigative File	Civilian Under Investigation, Investigator, Civilian's Personnel File
IA 32	Emergency Suspension From Duty Notification (Civilian Personnel)	Investigative File	Civilian Under Investigation, Civilian's Commanding Officer, Chief
IA 33	Withdrawal of Emergency Suspension From Duty (Civilian Personnel)	Investigative File	Civilian Under Investigation, Civilian's Commanding Officer
IA 34	Suspension from Duty Notification (Civilian Personnel)	Investigative File	Civilian Under Investigation, Civilian's Commanding Officer
IA 35	Confidentiality Agreement and Receipt	Investigative File	Officer Under Investigation
IA 36	Dissemination Log	Dissemination Log File	Investigative File
IA 37	Notification of Complaint/Investigation (Civilian Personnel)	Investigative File	Civilian Under Investigation
IA 38	Citizen Complaint Procedures	N/A	General Public, Persons Inquiring About Procedures, HPD Lobby, City Hall Lobby
IA 39	RESERVED		
IA 40	Report of Interview	Investigative File	Member under investigation
IA 41	Non-HPD Employee Complainant / Witness Statement	Investigative File	Member under investigation

FORM NO.	FORM NAME	ORIGINAL	COPIES
IA 42	HPD Employee Complainant/ Witness Statement	Investigative File	Member under investigation.